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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 72-6520

KINNEY KINMON LAU, et al.,

Petitioners,

vs.

ALAN H. NICHOLS, et al.,

Respondents.

BRIEF OF AMICI CURIAE

The Chinese Consolidated Benevolent Association, The Chinese American Citizens Alliance, The Chinese Chamber of Commerce, The Chinese for Affirmative Action, The Chinatown/North Beach District Council, The Chinatown/North Beach Area Youth Council, The Chinese Newcomers Service Center, The Chinatown/North Beach Family Planning Educational Services, The Association of Chinese Teachers, Donaldina Cameron House, Mr. William J. Chow, Mr. Paul S. Fong, and Mr. Henry S. Tom, in Support of the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

All parties have consented to the filing of this brief on behalf of the Chinese Consolidated Benevolent Association, the Chinese American Citizens Alliance, the Chinese Chamber of Commerce, the Chinese for Affirmative Action, the Chinatown/North Beach Dis-

trict Council, the Chinatown/North Beach Area Youth Council, the Chinese Newcomers Service Center, the Chinatown/North Beach Family Planning Educational Services, The Association of Chinese Teachers, Donaldina Cameron House, Mr. William J. Chow, Mr. Paul S. Fong, and Mr. Henry S. Tom as amici curiae in support of the writ of certiorari to the United States Court of Appeals for the Ninth Circuit.¹

INTEREST OF AMICI

The Chinese Consolidated Benevolent Association (commonly know as the Chinese Six Companies) is the leading and most prominent Chinese organization in the United States. The Chinese Six Companies is the parent organization of the associations from the seven large districts which make up Southern China; more than 90 percent of the Chinese persons in the United States descend from one of these seven districts. Besides dealing with the myriad educational, social, and economic problems that confront the Chinatown area of San Francisco, the Association also acts as an official liaison between the Chinatown area and other elements of the San Francisco community.

The Chinese American Citizens Alliance [CACA] is a national organization established 63 years ago to provide a network of communication between the various Chinese-American communities in the United

¹The consent of both the petitioners and the respondents are being filed with the Clerk of the Court in accordance with Rule 42(2) of the Rules of this Court.

States. CACA has played a prominent role in getting amendments to the United States Immigration and Nationality Act which have relaxed the restrictions placed on Chinese seeking to immigrate to this country. *E.g.*, 8 U.S.C. §§1152, 1153 (1965).

The Chinese Chamber of Commerce represents the business interests of San Francisco's Chinatown area. The Chamber of Commerce both develops and promotes economic activities which involve thousands of non-English-speaking Chinese workers. Moreover, over the years, the Chinese Chamber of Commerce has expanded its activities and now serves as a service organization for the entire Chinatown community. The Chamber of Commerce also plays a large role in sponsoring numerous cultural events in the Chinatown area.

Chinese for Affirmative Action [CAA] is an organization dedicated to defending the civil rights of the Chinese community in the United States. Based in San Francisco, CAA is actively engaged in securing health, education, welfare, manpower training, and economic services to meet the needs of Chinese communities. It has negotiated jobs for Chinese in both private and public employment sectors and has initiated many English and Chinese-language cultural programs on radio and television. CAA has also designed and promoted affirmative action plans for various businesses, unions, and government agencies for the employment of Chinese individuals and has attempted to implement such programs in the San Francisco Unified School District.

The Chinatown/North Beach District Council is composed of professional and lay individuals who provide social services information to the San Francisco Chinatown community. Formed in 1960, the purpose of the District Council is to develop and implement comprehensive education, health, cultural, employment, youth, and senior citizens programs. Besides implementing its own programs, the District Council organizes and coordinates the efforts of other concerned agencies and individuals in Chinatown.

The Chinatown/North Beach Area Youth Council was founded in 1968 with the support of various youth-serving agencies and organizations in San Francisco. The Council was formed to effectively articulate the needs of the youth of the Chinatown area—many of who are non-English-speaking—and to plan, develop, and carry out effective programs in the areas of employment, education, and recreation for these youth. Many of these programs are geared directly at the English-language deficiencies of young Chinese individuals.

The Chinese Newcomers Service Center was founded in 1969 by residents of San Francisco's Chinatown interested in the welfare of immigrants and other non-English-speaking Chinese individuals. The Center serves as an information and referral center for Chinatown residents who are unable to avail themselves of both public and private services because of language and cultural barriers. The Center provides a 24-hour telephone service ("Chinatown Exchange"), a Drop-In Service, and a Home Visiting Program.

The Center also works closely with the International Social Service of Hong Kong, which provides pre-migration counseling and services to prospective immigrants.

The Chinatown/North Beach Family Educational Services was established under the auspices of the United States Department of Health, Education and Welfare to offer educational and informational services on family planning, birth-control methods, venereal disease, and cancer signals. Much of its work is done with non-English-speaking residents of San Francisco's Chinatown area.

The Association of Chinese Teachers [TACT] is a non-profit professional association of teachers who volunteer their services to improve the quality of education in the Chinatown area of San Francisco. TACT has planned numerous programs to meet the English-language disabilities of Chinese-speaking children. Many of these programs have been formally submitted to the San Francisco Unified School District.

The Donaldina Cameron House of Chinatown is a community center sponsored by the United Presbyterian Church. It has offered youth and social case-work services to families and individuals in San Francisco's Chinatown area since 1873; many of these services aim at overcoming the problems faced by non-English-speaking Chinese residents of San Francisco. The Donaldina Cameron House also offers recreation and craft activities; child and adult guidance programs; and community organization services.

William J. Chow is the president of the San Francisco Civil Service Commission. He has been a practicing attorney in San Francisco's Chinatown area for over 30 years and formerly served as chairman of the San Francisco Housing Authority and as a member of the San Francisco Parking Authority. Mr. Chow is also a former president of the Chinese Consolidated Benevolent Association (commonly known as the Chinese Six Companies), which is also an amicus in the instant brief.

Paul S. Fong was born and raised in San Francisco's Chinatown and is presently a practicing attorney there. He has worked extensively with impoverished non-English-speaking youths as a parole agent for the California Youth Authority assigned to Chinatown. He is also a member of the board of directors of the Chinatown/North Beach Youth Service and Coordinating Center, a delinquency prevention program in Chinatown sponsored by the California Council on Criminal Justice.

Henry S. Tom is the executive director of the Chinatown Branch of the Young Men's Christian Association. He has been an administrator in the Chinatown area for more than 20 years and has pioneered the YMCA's Educational-Special Help Program.

DISCUSSION

PETITIONERS' LACK OF ANY ENGLISH-LANGUAGE SKILLS NOT ONLY TOTALLY EXCLUDES THEM FROM EQUAL EDUCATIONAL OPPORTUNITIES, BUT DRAMATICALLY CONTRIBUTES TO THE POVERTY, DELINQUENCY, AND EMPLOYMENT PROBLEMS IN SAN FRANCISCO'S CHINATOWN.

The failure of the San Francisco Unified School District to provide compensatory English Instruction to non-English-speaking Chinese students is a patent denial of these students' rights to equal educational opportunities which are now received only by English-speaking students. The Chinese-speaking children who are denied these rights include not only immigrants to the United States, but also those non-English-speaking children who were born and raised in San Francisco's Chinatown area.

San Francisco encompasses the largest Chinese community in the United States. In fact, it is the largest outside the Orient itself.² The Chinese population in San Francisco began to increase after World War II when most of California's anti-Chinese laws were repealed and federal immigration statutes were modified.³ The influx of Chinese immigrants during the past few decades naturally included children who lacked any knowledge of English.⁴ However, the same lack of knowledge of English is equally present

²The 1970 United States Census shows there are 58,696 Chinese people in San Francisco. This constitutes 8.2 percent of the total San Francisco population. U.S. Dept. of Commerce, *1970 Census Population and Housing: Census Tracts: San Francisco-Oakland, Calif. Standard Metropolitan Statistical Area*, PHC(1)-189 (1972).

³*E.g.*, Immigration and Nationality Act §§ 202, 203, 8 U.S.C. §§ 1152, 1153 (1965).

⁴San Francisco Unified School District, "Educational Equality/Quality," Report #2, 25 (1969).

among tens of thousands of American-born Chinese-speaking children.⁶ Not surprisingly, the San Francisco Unified School District has conceded that none of its existing programs can overcome the English language barriers faced by all Chinese speaking children, whether American-born or not.⁷

The educational deprivations suffered by these non-English-speaking Chinese children have been analyzed in many reports. A citizens' study committee of the Bay Area Social Planning Council was formed in 1969 to study the problems of Chinese residents of San Francisco. The Planning Council's Committee, headed by California Supreme Court Justice Stanley Mosk and San Francisco Municipal Court Judge Harry W. Low, concluded that "... existing efforts to provide English language instruction to Chinese-speaking students are inadequate."⁸ Similarly, another study of Chinese residents in San Francisco emphasized the failure of the San Francisco Unified School District to deal with the language dilemma confronting non-English-speaking Chinese students.⁹

The findings of these studies are supported by Allen Tucker, education coordinator of San Francisco's Chinatown-North Beach English Language Center,

⁶It is thus more than just coincidental that five of the named petitioners in this action—David Leong, David Sun, Judy Sun, Joan Yee, and Karen Yee—are American-born citizens of the United States.

⁷San Francisco Unified School District, "Pilot Program: Chinese Bilingual" 3A, 6A (May 5, 1969), Plaintiffs' Exhibit No. 5 (App. —).

⁸Bay Area Social Planning Council, "San Francisco Chinese Community Citizens' Survey & Fact Finding Committee Report" 11 (1969).

⁹*San Francisco Chronicle*, 2 (Feb. 24, 1971).

who has conducted research on the feelings of inferiority in Chinese students that stem from English-language barriers.

In the classroom [non-English-speaking Chinese students] are often unable to understand what is said by the teacher or by another student. They appear to be unduly passive and unwilling to interact or participate. It is not so much a matter of unwillingness as of inability because of their failure to understand instructions, directions, or the purpose of a classroom activity. Isolated behind their language barriers they become discouraged, withdrawn, and begin to accept failure as unavoidable.⁹

The obstacles facing a non-English-speaking Chinese student do not end in the classroom but place a further burden on the student that affects his entire life. One's confidence and success in using and receiving both public and private services often depend on one's ability to communicate effectively in English. For example, severe community-police problems result from such difficulties. Those problems were recently described in the testimony of San Francisco Police Officer Donald Tong before the California Fair Employment Practices Commission:

For the past three years, during my assignment with the Community Relations Unit as liason to the Chinatown Community, I have seen many police relations problems and frustrations of people living in Chinatown. Most problems and frustrations arise because policemen are unable

⁹Integrated Education Associates, *Chinese Americans: School and Community Problems* 45 (1972).

to explain their activities and behavior to Chinese residents and vice-versa. The officers assigned to the community do not speak Cantonese, and many of the Chinese residents do not speak English. There is no common ground for effective communication.¹⁰

In a survey conducted in 1970 by the Bay Area Social Planning Council, the major non-educational problems affecting Chinese residents of San Francisco were identified as impoverished conditions, juvenile delinquency, and employment barriers.¹¹ Each of these problems has a direct nexus to the English-language barriers which are perpetuated by the San Francisco Unified School District's exclusion of Chinese-speaking children from equal education opportunities.

The most important myth dispelled by this and other studies is the widely-held assumption that the Chinese, at least in America, take care of their own. From this, it is assumed that all Chinese receive the necessary assistance within their own ethnic community and in time move up the socio-economic scale.¹² The facts, however, show the gross impoverished conditions endured by a large percentage of Chinese residents in San Francisco. Based on 1970 United States Census information, approximately 30 percent of the Chinese in the Chinatown area of

¹⁰Testimony of Donald Tong, San Francisco Police Officer, before the California Fair Employment Practice Commission (December 1970).

¹¹Bay Area Social Planning Council, "1970 Chinese Staff Analysis" 20 (1971).

¹²E.g., S. Perry, *The Chinese Poor in America* 3 (1968).

San Francisco live below the poverty level set by the federal government (as compared to 9.8 percent of all San Francisco residents). Moreover, the median income of families in Chinatown is barely half that of all San Francisco families.¹³ It is thus not surprising that San Francisco's Chinatown is officially designated as a poverty target area by the Office of Economic Opportunity of the United States.

Directly related to these severe poverty conditions is the problem of juvenile delinquency in San Francisco's Chinatown. The inability to speak English is the difficulty most frequently expressed by youths in Chinatown.¹⁴ Faced with a school system that is unwilling to provide them any English-language skills and viewing college as an impossible dream for that reason, these students swell the dropout statistics in San Francisco.¹⁵ Lacking a high school diploma and confined to Chinatown because of their English-language problems, the youth turn to street gangs:

The Chinese street kids are almost all young men of high school age or older. Many of these youth come from very poor or unstable backgrounds and have few language skills. In high school they sit in the back of the classroom not knowing what is going on because the teacher is speaking rapidly in a foreign language, English.

¹³U.S. Dept. of Commerce, *1970 Census Population and Housing: Census Tracts: San Francisco-Oakland, Calif. Standard Metropolitan Statistical Area*, PHC(1)-189 (1972).

¹⁴Bay Area Social Planning Council, "1970 Chinese Staff Analysis" 18 (1971).

¹⁵See, e.g., San Francisco Unified School District, "Pilot Program: Chinese Bilingual" 6A (May 5, 1969), Plaintiffs' Exhibit No. 5 (App. —).

The teacher asks them questions, they cannot answer, and they are classified dumb. Facing insurmountable problems they give up, cut classes and hang around pool halls, bars or street corners. In the street, life is infinitely more exciting than in the boring classroom. Here they can communicate with friends in their native language. There is more communication here among Chinese-speaking friends than in the public classroom where English language teaching frustrates their innate talents and abilities.¹⁶

Until equal access to the educational system is provided, the non-English-speaking student of today will be caught in this same quandary.

Finally, the inevitable isolation of non-English-speaking Chinese students from the economic and social process in San Francisco is reflected in the pattern of employment of Chinatown residents. The mobile resident, who is apt to be fluent in English, can move out of Chinatown and into the mainstream of the American economic system—into technical, professional, and managerial positions. Those lacking knowledge of English, however, do not have the same opportunities. For example, among residents of San Francisco's Chinatown, less than 10 percent of those over age 16 and employed are classified managerial or professional, as compared to 25 percent in San Francisco as a whole.¹⁷ The failure of the San Francisco Unified School District to redress the language dis-

¹⁶J. Leong, "Hong Kong Immigrants and the Public Schools", in *Asian American Review* 34 (Spring 1972).

¹⁷See note 13, *supra*.

crimination faced by non-English-speaking Chinese students serves to exacerbate this disparity.

CONCLUSION

Studies and surveys have documented the long-known fact that the San Francisco Unified School District has failed—and continues to fail—to afford non-English-speaking Chinese students any access to an education. It is clearly a fictional hope to believe that by supplying all students the same books, materials, facilities, and programs, the educational system is equal to all. The obligation of the School District must clearly go beyond that gesture, which is totally meaningless to non-English-speaking Chinese students. Compensatory language instruction must be afforded these non-English-speaking children if they are to benefit from the books, materials, facilities, and programs now geared solely for the use of English-speaking students. The School District must provide such language instruction if indeed it wishes to provide equal educational opportunities to all.

Dated, San Francisco, California,

July 25, 1973.

Respectfully submitted,

NORMAN LEW,

Attorney for Amici Curiae.

BILL ONG HING,
Of Counsel.